

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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NOV 27 1998

In the Matter of)

MOBILEMEDIA CORPORATION, et al.)

Applicant for Authorizations and Licensee of
Certain Stations in Various Services)

Applications of)

MOBILEMEDIA CORPORATION and)
ARCH COMMUNICATIONS GROUP, INC.)
for Transfer of Control of Their Radio Licenses)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WT DOCKET NO. 97-115

Rep. No. LB-99-05

To: The Commission

REPLY COMMENTS ON
APPLICATIONS FOR TRANSFER OF CONTROL AND
PETITION TO TERMINATE AND FOR SPECIAL RELIEF

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SUMMARY

MobileMedia Corporation and substantially all of its subsidiaries, Debtors-in-Possession (“MobileMedia” or the “Company”), hereby submits these Reply Comments in response to the Wireless Telecommunications Bureau’s Consolidated Comments on Applications For Transfer of Control and Petitions To Terminate and For Special Relief, filed in the above-captioned proceeding on November 16, 1998.

There is broad agreement among the commenters that the proposed transaction will serve the public interest and should be expeditiously approved. The party commenters — MobileMedia, the Wireless Telecommunications Bureau (“Bureau”) and the Secured Lenders — unanimously agree that the proposed transfer warrants approval under the Commission’s *Second Thursday* doctrine. Moreover, the Bureau, after conducting a scrupulous competitive analysis, including a review of MobileMedia’s and Arch’s most concentrated markets, concludes that the transaction raises no competitive concerns. Indeed, the transaction will produce enormous public interest benefits, including full payment of MobileMedia’s secured creditors, protecting the maximum value of the claims of MobileMedia’s unsecured creditors, and maintaining uninterrupted service to MobileMedia’s subscribers.

MobileMedia is making every effort to expeditiously secure bankruptcy court and all other approvals necessary to make these benefits possible. Towards that end, MobileMedia suggests that linking completion of the Company’s ongoing compliance efforts with Commission approval of the Applications, as the Bureau proposes, may introduce unnecessary delay. As an initial matter, the compliance process and the grant of the Applications are not legally related. The compliance program predates MobileMedia’s emergency motion which

initiated the *Second Thursday* proceeding, and was conceived and designed to correct general licensing discrepancies completely unrelated to the FCC rule violations that were designated for hearing. Moreover, in over two years the voluntary compliance program has uncovered no major violations of the variety that would bring a licensee's character qualifications into question under FCC precedent.

Furthermore, linking completion of the Company's program to grant of the Second Thursday Petition, while creating delay and uncertainty with respect to the proposed transaction, advances no FCC policy. Grant of the Second Thursday Petition is without prejudice to the Bureau's right to pursue enforcement action arising out of MobileMedia's discrepancy reports, although the Company maintains that no further enforcement action is warranted. In any event, MobileMedia hopes to submit a final report by the end of 1998. Accordingly, the Commission will have all the information it needs to expeditiously act on the Applications and the compliance issues simultaneously, rather than delaying or conditioning a grant.

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MobileMedia Corporation and substantially all of its subsidiaries, Debtors-in-Possession ("MobileMedia" or the "Company"), hereby submits these Reply Comments in response to the Wireless Telecommunications Bureau's Consolidated Comments on Applications For Transfer of Control and Petitions To Terminate and For Special Relief, filed in the above-captioned proceeding on November 16, 1998.¹

¹ On September 2, 1998, MobileMedia and Arch Communications Group, Inc. and its subsidiaries ("Arch") jointly filed with the Commission Applications for Transfer of Control and Petition to Terminate and for Special Relief (the "Second Thursday Petition" or "Applications"). The Applications were placed on public notice on October 15, 1998. "MobileMedia Corporation, Debtor-in-Possession, and Arch Communications Group, Inc. Seek Consent to Transfer Control of Licenses," Public Notice, Report No. LB-99-05, WT Docket No. 97-115, DA 98-0280 (rel. October 15, 1998). Comments were filed by The Chase Manhattan Bank, Agent for MobileMedia's Prepetition and Postpetition Lenders ("Secured Lenders"); the Wireless Telecommunications Bureau ("Bureau"); and Orbital Communications Corporation ("ORBCOMM").

I. INTRODUCTION

As MobileMedia, the Bureau, and the Secured Lenders agree, the proposed transaction is entirely consistent with the Commission's *Second Thursday* doctrine.² Moreover, the Bureau (the only commenter addressing the competition issue) concludes that the transaction raises no competitive concerns.³ Indeed, the transaction will produce enormous public interest benefits, including full payment of MobileMedia's secured creditors, protecting the maximum value of the claims of MobileMedia's unsecured creditors, and maintaining uninterrupted service to MobileMedia's subscribers. MobileMedia is making every effort to expeditiously secure bankruptcy court and all other approvals necessary to make these benefits possible.⁴ Toward that end, MobileMedia suggests that linking completion of the Company's ongoing compliance efforts with Commission approval of the proposed transaction, as the Bureau proposes,⁵ may introduce unnecessary delay. MobileMedia understands the Bureau's desire to protect its right to pursue enforcement action if any is warranted after completion of MobileMedia's compliance plan. However, the Company submits that while grant of the Second Thursday Petition will foreclose inquiry into the issues designated for hearing, such a grant can be made without prejudice to any future enforcement action that the Commission or

² Wireless Telecommunications Bureau's Consolidated Comments on Applications for Transfer of Control and Petition to Terminate and for Special Relief, filed November 16, 1998 ("Bureau Comments") at 39; Comments of Secured Lenders in Support of Applications for Transfer of Control and Petition to Terminate and for Special Relief, filed November 16, 1993 ("Secured Lenders' Comments") at 2.

³ Bureau Comments at 7-10.

⁴ A disclosure hearing is scheduled in the U.S. Bankruptcy Court for the District of Delaware on December 10, 1998 for the purpose of allowing MobileMedia to formally present its Merger Agreement to the creditors for approval.

⁵ Bureau Comments at 1.

Bureau may later determine is appropriate as a result of the Company's compliance efforts. Accordingly, the instant Applications should be granted expeditiously and without condition.

II. MOBILEMEDIA AND THE BUREAU AGREE THAT THE PROPOSED TRANSACTION IS PROCOMPETITIVE AND THAT GRANT OF THE APPLICATIONS IS CONSISTENT WITH THE COMMISSION'S SECOND THURSDAY DOCTRINE.

MobileMedia and the Bureau agree that the proposed merger poses no threat to competition and, in fact, would enhance competition, as measured by the criteria established by the Commission in *Bell Atlantic-Nynex*.⁶ Moreover, the party commenters are unanimous in their agreement that the proposed transaction satisfies the requirements of *Second Thursday*.⁷

A. The Proposed Merger is Procompetitive.

The Second Thursday Petition, the *Third CMRS Competition Report*, and the Bureau's Comments in this proceeding all demonstrate that the proposed merger poses no threat to competition. To the contrary, the Bureau's analysis demonstrates that the transaction is procompetitive because it will result in a Combined Company better positioned to provide service in the highly competitive nationwide paging and messaging market.

As MobileMedia has explained previously,⁸ and as the Commission recently underscored in its *Third CMRS Competition Report*, the paging/messaging market is "highly competitive."⁹ The proposed merger involves two companies which lack market power;

⁶ *Id.* at 39.

⁷ *Id.* at 7-10; Secured Lenders' Comments at 2.

⁸ Second Thursday Petition at 35.

⁹ *See Annual Report and Analysis of Competitive Market Conditions with Respect to*
(Continued...)

whose combined national market share would still be significantly less than the largest paging provider; and which face stiff competition from numerous facilities-based carriers, resellers and new entrants. Such a combination cannot and will not adversely affect the competitive nature of the paging/messaging market. Accordingly, the Commission may readily and confidently conclude, as the Bureau does,¹⁰ that the transfer will not raise competitive concerns inconsistent with the public interest.

The Bureau's rigorous analysis confirms that, even in the *most* concentrated markets, the Combined Company will pose no threat to competition.¹¹ With respect to competition in paging generally, the Bureau stated: "the risk of coordinated behavior in paging markets will generally be low, due primarily to the large number of independent competitors that provide access in most markets, the presence of significant excess capacity, and the presence of substantial resale competition."¹² Nevertheless, Arch and MobileMedia submitted additional data on the Combined Company's most concentrated markets, as identified by the Bureau: Columbus and Dayton, Ohio and Manchester, New Hampshire. The Bureau concluded with respect to all three markets that the "present competitive environment" would limit the

(...Continued)

Commercial Mobile Services, Third Report, at 51 n. 260 (rel. June 11, 1998) (hereinafter "*Third CMRS Competition Report*").

¹⁰ Bureau Comments at 39.

¹¹ *Id.* at 35-37. MobileMedia and Arch worked closely with the Bureau staff to produce the data used by the Bureau in its analysis.

¹² *Id.* at 34.

Combined Company's ability to exercise market power and therefore the proposed transaction "does not pose a meaningful threat to competition."¹³

Furthermore, the Bureau's analysis found that the proposed transaction would produce procompetitive benefits.¹⁴ The Bureau states:

this proposed transaction would result in the formation of a more effective competitor in the nationwide market for messaging services. The merger would add MobileMedia's assets in large markets to Arch's capabilities in smaller and mid-sized markets.¹⁵

Accordingly, given that both the procompetitive benefits of the proposed merger and the lack of anticompetitive effects, MobileMedia submits that expeditious approval is warranted.

**B. Grant of the Applications Is Consistent with the Commission's
Second Thursday Doctrine.**

Under the policy articulated in *Second Thursday*,¹⁶ a licensee in bankruptcy may transfer facilities without a hearing to resolve outstanding character issues if the individuals charged with misconduct (1) would have no part in the proposed operations of the licensee after the transfer and (2) would derive no benefit from such a transfer, or would receive only a minor benefit that is outweighed by equitable considerations in favor of innocent creditors.¹⁷ As MobileMedia demonstrated in the Applications, and as the Bureau and the Secured Lenders agreed in their Comments, both criteria for *Second Thursday* relief are satisfied in this case.

¹³ *Id.* at 35-37.

¹⁴ *Id.* at 37-39.

¹⁵ *Id.* at 38-39.

¹⁶ *Second Thursday Corp.*, 22 FCC 2d 515 (1970).

¹⁷ *Id.* at 516.

1. None of the Alleged Wrongdoers¹⁸ Will Have Any Involvement in the Operations of the Combined Company.

As MobileMedia demonstrated in its Applications, no designated wrongdoer will have any involvement in the operations of the Combined Company after consummation of the merger.¹⁹ The Bureau and Secured Lenders unqualifiedly agree.²⁰

2. The Public Interest Benefits of the Proposed Transaction Are Overwhelming.

MobileMedia has shown in its Applications that the public interest benefits of the

¹⁸ As MobileMedia explained in its Second Thursday Petition, the Commission has determined that “the allegations against MobileMedia are sufficient to raise questions only as to the qualifications of four individuals.” *MobileMedia Corp.*, 12 FCC Rcd 11861, 11863 (1997); Second Thursday Petition at 27. Those individuals are Gene Belardi, Kenneth McVay, John Kealey, and Gregory Rorke. All other current and former officers, directors and senior managers of MobileMedia — including David Bayer — have been found free from any substantial and material questions concerning their qualifications to be a licensee. *Id.* at 11863-64; *see also NetSat 28 Company, L.L.C.*, 1998 FCC Lexis 2036, ¶ 2 (April 24, 1998) (“The Commission found that the scope of the parties alleged to have engaged in misconduct was overly broad and among other actions, excluded David Bayer from the scope of the MobileMedia proceeding. Therefore, we conclude that the condition on the NetSat 28 authorization related to the MobileMedia proceeding is no longer necessary”). Accordingly, ORBCOMM’s assertion that an issue regarding Mr. Bayer remains unresolved is completely without merit. Informal Comments of ORBCOMM, filed November 16, 1998 at 2. Equally without merit is ORBCOMM’s unsupported claim that MobileMedia’s counsel was ever a “suspected wrongdoer” that might be unjustly enriched as a result of the proposed merger. *Id.* As ORBCOMM and its counsel are well aware, no issue was ever designated as to MobileMedia’s counsel; nor was the company’s counsel ever designated a “suspected wrongdoer.” Likewise without merit is ORBCOMM’s argument that the Commission should deny MobileMedia’s request for waiver of fees. What possible interest ORBCOMM could have in this request is not readily apparent. However, the Commission has routinely waived fees for bankrupt companies – in undoubted recognition that fees at this juncture are borne by innocent creditors and that the FCC’s policies should be designed to accommodate and protect the interests of innocent creditors wherever possible. *See LaRose v. FCC*, 494 F.2d 1145, 1147-48 (D.C. Cir. 1974).

¹⁹ Second Thursday Petition at 29-30.

²⁰ Bureau Comments at 8; Secured Lenders’ Comments at 2.

proposed transaction are enormous²¹ and that, as both the Bureau and Secured Lenders agreed in their Comments, equitable considerations warrant the application of *Second Thursday* to this case.²² First, preservation of an estate of this size resulting from the bankruptcy of a publicly traded company is unprecedented. The grant of these Applications will help preserve over \$1.1 billion owed to innocent creditors, which appears to be the largest amount of protection available for innocent creditors in any *Second Thursday* transaction.²³ Second, secured creditors will receive full payment of their claims, amounting to \$649 million, if the transaction is approved and consummated. Third, unsecured creditors will receive a controlling equity position in the Combined Company. Finally, consumers also will benefit from approval of this transaction, through the continued provision of services. MobileMedia has over 3.2 million units in service, and approval of the Applications will ensure that they continue to operate without interruption.

3. Any Potential Benefit to the Wrongdoers Would Be Far Outweighed by the Public Interest Benefits to the Innocent Creditors and MobileMedia's Subscribers.

As the Bureau and the Secured Lenders affirmed in their Comments,²⁴ MobileMedia has demonstrated that it satisfies the second prong of the *Second Thursday* test. The alleged

²¹ Second Thursday Petition at 35-38.

²² Bureau Comments at 10; Secured Lenders' Comments at 3 ("[T]he proposed transaction will safeguard the interests of innocent creditors in accordance with the principles of *Second Thursday*").

²³ The *Second Thursday* doctrine requires the Commission to give substantial deference to the objectives of the bankruptcy code and, in particular, to the protection of innocent creditors. See *LaRose* at 1147-48.

²⁴ Bureau Comments at 8, 10; Secured Lenders' Comments at 2 ("MobileMedia and Arch have demonstrated that none of the suspected wrongdoers is employed by either company, and that none will play any role in a combined entity. Likewise, since all equity interests in
(Continued...)

wrongdoers will not likely benefit from the approval of this transaction and, in the event they do, any benefits they may receive are inconsequential in light of the very substantial benefits to innocent creditors and the general public. First, MobileMedia's existing shareholders will not receive any consideration from the proposed transaction. Although Mr. Kealey currently owns stock in MobileMedia, the Amended Plan provides for the cancellation, without any distribution, of all equity interests in MobileMedia.²⁵ Thus, no direct benefits will accrue to the alleged wrongdoers as a result of any equity holdings they may have in MobileMedia.

Second, the bankruptcy proofs of claim submitted by Belardi and Kealey are unlikely to result in any benefit to the wrongdoers. As an initial matter, these claims are highly speculative and will be vigorously opposed by MobileMedia in the bankruptcy proceedings. However, even if Belardi and Kealey were to receive an award for the total amount claimed, this amount would represent less than one quarter of 1% of the equity in the Combined Company.²⁶ Given that the Commission previously has found benefits constituting 8% of the overall sale price to be *de minimis*,²⁷ benefits amounting to less than 1% of the overall sale price should be deemed *de minimis* as well.²⁸

(...Continued)

MobileMedia will be canceled under the Amended Plan, no distribution will be made to any wrongdoer as a result of this transaction.”)

²⁵ Section 1.5(b) of the Merger Agreement provides that all shares, options, warrants or “other right issued by any of the Debtors to acquire any such capital stock and outstanding immediately prior to the Effective Time shall be canceled without payment of any consideration therefor and shall cease to exist.”

²⁶ The total amount claimed is \$1,604,048.78. The consideration payable to the creditors, even excluding \$170 million previously delivered, includes \$479 million in cash. In addition, the unsecured creditors will receive equity rights in the Combined Company expected to be worth hundreds of millions of dollars.

²⁷ *Shell Broadcasting, Inc.*, 38 FCC 2d 929, 933 (1973); see also *Walter S. Kelley*,
(Continued...)

MobileMedia, the Bureau and the Secured Lenders agree that these Applications satisfy *Second Thursday's* requirements for the transfer of a license without a hearing to resolve outstanding character issues. Accordingly, there is no reason for the Commission to delay approval of the proposed transaction.

III. THE COMMISSION SHOULD NOT DELAY GRANT OF THE APPLICATIONS PENDING COMPLETION OF MOBILEMEDIA'S COMPLIANCE EFFORTS.

The Bureau's Comments propose delaying grant of the Second Thursday Petition until MobileMedia has completed its compliance program or, in the alternative, conditioning grant of the Petition on the conclusion of any Bureau enforcement action — including the payment of any forfeitures that may be assessed — specifically arising out of the Company's continuing compliance efforts.²⁹ Since the disclosures that may lead to possible enforcement action will be known to the Commission in the next few weeks, MobileMedia hopes that the Commission would be able to act on any possible enforcement actions in such a manner that does not delay

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WFXL (TV), 10 FCC Rcd 4424, 4426 (1995) (wrongdoer benefits totaling approximately 2% of the sales price are *de minimis*).

²⁸ MobileMedia notes that it makes little sense to describe any award that Belardi or Kealey may receive as "benefits" derived "from the sale" of a licensee under the *Second Thursday* doctrine. There is absolutely no nexus between favorable action on the Applications and the Belardi and Kealey claims. Stated another way, neither the Commission's approval or disapproval of the Applications will affect the Belardi and Kealey claims whatsoever. Those claims arise not from the proposed transaction but from a collateral dispute over the wrongdoers' employment contracts and, as a result, the claims will survive favorable or unfavorable action by the Commission on the Applications. The Bureau supports MobileMedia's position on this point, reasoning in support of its conclusion that *Second Thursday* relief is warranted that: "The Bureau . . . finds it significant that any benefit Belardi and Kealey would receive would result from their employment contracts, as opposed to the underlying transfer of control." Bureau Comments at 10.

²⁹ *Id.* at 1. Of course, potential enforcement matters that were the subject of the hearing designation order in this case will be obviated by grant of the Second Thursday petition.

grant of the Second Thursday Petition. If not, the expeditious grant of the Second Thursday Petition could be made with the recognition that the grant is without prejudice to any enforcement action that may arise from the compliance plan. As detailed below, MobileMedia believes that this alternative would both allow the transaction to go forward — thus bringing substantial benefits to MobileMedia's innocent creditors, as outlined above — and preserve the Bureau's right to pursue enforcement action, if any, arising out of MobileMedia's discrepancy reports. Moreover, favorable action on the transaction need not be conditioned to accomplish this goal.

A. MobileMedia's Compliance Audit is an Ongoing Effort, Unrelated to the *Second Thursday* Proceeding.

MobileMedia's submission of regular discrepancy reports to the Bureau is not the beginning of the Company's compliance effort but the culmination of a voluntary, three-stage process initiated in 1996, well before the Company filed its emergency motion initiating the *Second Thursday* proceeding.³⁰ The compliance audit was designed to locate and correct licensing discrepancies totally separate from the Company's FCC rule violations that were designated for hearing, and, hence, is not legally related to the *Second Thursday* proceeding. The audit was designed and monitored by an independent consultant, Mr. Ralph Haller, former Chief of the FCC's Private Radio Bureau, with the assistance of Mr. John Theimer, a former Engineer-in-Charge at the Miami and Buffalo offices of the Field Operations Bureau. MobileMedia has directed considerable time and resources to the compliance plan, which the

³⁰ Emergency Motion for Special Relief and Stay of Proceedings Regarding MobileMedia Corporation, filed April 23, 1997.

Company believes is unprecedented in the industry and which may serve as a model for other companies. The three stages of the compliance process are as follows:

- Stage 1: The first stage of the compliance program involved consolidating the files for MobileMedia's approximately 6,000 facilities, almost 1 million pages of documents, into a single database in a consistent format. Stage 1 was completed in 1997.
- Stage 2: The second stage of the compliance program involved physically inspecting MobileMedia's 3,000 sites located throughout the United States and completing a site inspection form ("SIF") for each facility. Information obtained through this process was added to MobileMedia's database. Stage 2 was completed in the Fall of 1998.
- Stage 3: The third stage of the program involves reconciling the information in MobileMedia's database, obtained through file consolidation and site inspection, with the information contained in the FCC's licensing files. The compliance program provides for MobileMedia to report discrepancies between the information contained in its database and the FCC's license files to the Commission. Stage 3 is still in progress.

Throughout the various stages, the Company has kept the Bureau informed of its progress. Most recently, in consultation with the Bureau, MobileMedia agreed to file periodic

discrepancy reports on a rolling basis.³¹ The first two of these reports were filed on November 13, 1998 and November 24, 1998.³²

By far, most of the discrepancies uncovered as a result of MobileMedia's compliance program are simply errors in the description of the coordinates of MobileMedia's station sites. Some of these discrepancies stem from errors clearly attributable to MobileMedia or to predecessor companies acquired by MobileMedia. Others, however, are the result of Commission database errors, the use of less accurate coordinate measurement equipment than that available today, and the like. Some are difficult, if not impossible, to decipher given the passage of time and the lack of Company or Commission records.³³ A relative few have involved the activation or relocation of a station without apparent Commission approval. MobileMedia has asked for special temporary authority for these stations where appropriate.

As a matter of Commission precedent, none of these discrepancies — which are coming to the Commission's attention only through the voluntary efforts of the Company — appears to be the kind of violation that would bring a licensee's qualifications into

³¹ Initially, MobileMedia planned to complete its compliance plan by submitting to the Bureau a single, comprehensive report. Subsequently, however, MobileMedia and the Bureau concluded that such an omnibus report might ultimately slow the compliance process by keeping from the Bureau the information it needs to update its records to reflect the reality of MobileMedia's operations, process requests for special temporary authority, and pursue enforcement action, if any, including the assessment of forfeitures. Instead, the parties agreed upon a rolling disclosure process, pursuant to which MobileMedia will report licensing discrepancies as they are uncovered, in reports filed on approximately a bi-weekly basis.

³² See Discrepancy Reports (without attachments), appended hereto as Exhibit 1.

³³ Where appropriate, the Company is endeavoring to access the Commission's archival records in Philadelphia in order to help piece together an accurate historical record.

question.³⁴ The majority of these discrepancies involve coordinate errors — instances in which the coordinates for a licensed facility are inaccurate, despite the fact that the facilities have never been moved. MobileMedia believes that a compliance audit of any other wireless company would turn up similar issues. In two years, the compliance program has uncovered no major violations of FCC rules beyond the Company's violations that were originally designated for hearing. MobileMedia respectfully submits that the nature of the violations and MobileMedia's unprecedented efforts to bring compliance issues and proposed solutions to the FCC strongly suggest that no further enforcement action is warranted. In any event, MobileMedia hopes to finish this phase of its compliance plan by the end of 1998, enabling the Commission, in its discretion, to act on the compliance issues simultaneously with action on the Applications.

B. Given the Rolling Nature of MobileMedia's Discrepancy Reports to the Commission, There Is No Need To Delay Grant of the Second Thursday Petition.

The Bureau's Comments express concern about the effect of grant of the Second Thursday Petition on the Bureau's ability to pursue future enforcement action arising out of MobileMedia's discrepancy reports.³⁵ However, Commission approval of the proposed transaction will not conflict with Bureau enforcement efforts, if any, that may arise from the reports. In fact, MobileMedia, as a licensee company, will survive the merger with Arch and remain subject to its compliance commitments as well as FCC enforcement action unrelated to

³⁴ Even unauthorized operation has resulted only in the Commission applying forfeitures. *See, e.g., Consolidated Communications Mobile Service, Notice of Apparent Liability for Forfeiture for Paging and Radiotelephone Service*, 12 FCC Rcd 3091 (1997); *see also Media General Cable of Fairfax County, Apparent Liability for Forfeiture*, 13 FCC Rcd 11868 (1998).

the designated issues, should the Bureau decide to pursue such action. MobileMedia notes, however, that the expense of any forfeiture imposed will ultimately be borne by the Company's innocent creditors, who will be the majority shareholders in the Combined Company. Moreover, the proposed transfer of control does not alter the statute of limitations governing Bureau enforcement actions arising out of the discrepancy reports. Accordingly, continued independent FCC processing of MobileMedia's Second Thursday Petition and the Company's compliance efforts will not jeopardize any Bureau enforcement effort.

C. Similarly, There Is No Need To Condition Grant of the Second Thursday Petition.

In addition, MobileMedia submits that the Commission should not condition grant of the Second Thursday Petition on any possible enforcement action. As indicated above, the violations uncovered during MobileMedia's compliance process are completely unrelated to the *Second Thursday* proceeding and do not appear to be of the variety that would bring the Company's qualifications into question. This effort will be completed in the very near term. However, conditioning approval of the proposed transaction, as the Bureau suggests, is unnecessary to preserve the Bureau's right to pursue enforcement action unrelated to the designated issues.³⁶ As a matter of FCC procedure, approval of the proposed transaction is without prejudice to enforcement action arising out of the discrepancy reports, if any, the Bureau or the Commission may elect to pursue. Conditioning grant of the proposed transfer, while similarly securing the Bureau's right to pursue future enforcement action, would have unnecessary detrimental effects. A conditioned grant would create needless uncertainty under

(...Continued)

³⁵ Bureau Comments at 12.

the Merger Agreement and complicate efforts to consummate the transaction. The fact that the Bureau's enforcement rights can be protected without the detrimental effects attendant to a conditional grant strongly suggests that a condition would not serve the public interest and should not be imposed.

IV. GRANT OF THE RULE WAIVERS MOBILEMEDIA REQUESTS WILL SERVE THE PUBLIC INTEREST.

A. Waiver of the NPCS Spectrum Cap Will Preserve The Value of the Combined Company for the Innocent Creditors.

In the Second Thursday Petition, MobileMedia requested a waiver of the NPCS spectrum cap pending the outcome of the Commission's NPCS rulemaking.³⁷ In its comments, the Bureau noted that, pursuant to *Western Wireless*, the maximum duration of such a waiver is 90 days after adoption of an order in the NPCS rulemaking proceeding or six months, whichever period expires earlier.³⁸ In light of the Bureau's Comments, MobileMedia supports Arch's position that a waiver of the maximum duration — requiring divestiture, if it should prove necessary, within six months of consummation of the proposed transaction — is warranted in this instance. The Commission may issue an order in the NPCS rulemaking proceeding within that time period, eliminating the need for the Combined Company to divest spectrum. Compelling a divestiture while there is still the possibility that the spectrum cap may soon be eliminated would not serve the public interest.

(...Continued)

³⁶ Bureau Comments at 11.

³⁷ Second Thursday Petition at 12-18.

³⁸ Bureau Comments at 16.

B. Grant of Standard License Authority for MobileMedia Facilities in Operation Under Interim Operating Authority Will Serve the Public Interest.

MobileMedia supports Arch's position that granting the Combined Company standard operating authority for certain MobileMedia frequencies currently in use under grants of interim operating authority³⁹ would serve the public interest. At a minimum, the Commission should take steps to avoid disruption of service to MobileMedia's current subscribers. Accordingly, if licenses to use the frequencies in question are to be awarded at auction, the Commission should grant the Combined Company interim operating authority to continue service until such time as an auction winner places facilities into service on these frequencies. Such an approach would provide the Combined Company with the alternative of migrating subscribers to licensed facilities or participating in the auction process. Both alternatives preserve service to subscribers and, hence, serve the public interest.

C. MobileMedia and the Bureau Are in Agreement With Respect to the Remaining Rule Waivers Requested in the Second Thursday Petition.

1. The Bureau Does Not Object to MobileMedia's Requests for Additional Authorizations and Blanket Exemptions to Cut-Off Rules.

In the Second Thursday Application, MobileMedia requested:

- That the grant of the Applications include authority for the Combined Company to acquire control of MobileMedia or Arch authorizations issued during the pendency of the Second Thursday Application or in the period between grant and consummation of the transaction; MobileMedia or Arch construction permits maturing into licenses after closing or that may have been omitted from the Applications; and MobileMedia or Arch applications pending at the time of consummation of the proposed transfer;⁴⁰ and

³⁹ For a list of the stations involved, see January 13, 1997 Public Notice at Attachment C.

⁴⁰ Second Thursday Petition at 23.

- Waiver of applicable cut-off rules where MobileMedia or Arch files amendments to pending Part 22, Part 24, Part 25, Part 90, Part 101 or other applications to reflect consummation of the proposed transfer of control.⁴¹

The Bureau's comments raise no objection to grant of the requested relief.⁴² MobileMedia submits that the transfer of thousands of licenses requires certain regulatory mechanisms to account for a reasonable number of omissions and ordinary clean-up. In previous transactions of this size, the Commission has routinely granted licensees authority to manage such "housekeeping" matters.⁴³ Such authority is again warranted in the instant case.

2. The Bureau Does Not Object to MobileMedia's Request for Authority to Exceed the Foreign Ownership Limit.

In its comments, the Bureau does not object to MobileMedia's request for waiver of the Foreign Ownership Limit.⁴⁴ However, the Bureau recommends that approval of the proposed transaction be conditioned on "[the] Applicants compliance with the Commission's Foreign Participation Order and all procedures established by the International Bureau."⁴⁵ Arch has informed MobileMedia that the Combined Company will remain subject to the requirements of the Foreign Participation Order and the International Bureau's procedures after grant of the Applications and consummation of the proposed merger. Accordingly, the request for waiver

⁴¹ *Id.* at 23-24.

⁴² Bureau comments at 20.

⁴³ *See Applications of PacifiCorp Holdings, Inc. and Century Telephone Enterprises, Inc.*, 13 FCC Rcd 8891, 8915-16 (1997); *Applications of Pacific Telesis Group and SBC Communications, Inc.*, 12 FCC Rcd 2624, 2665 (1997); *Applications of Craig O. McCaw and American Telephone and Telegraph Co.*, 9 FCC Rcd 5836, 5909 n.300 (1994); *Applications of Centel Corporation and Sprint Corporation*, 8 FCC Rcd 1829, 1833 (1993).

⁴⁴ Bureau Comments at 19.

⁴⁵ *Id.* at 20.

of the foreign ownership limit contained in the Second Thursday Petition is consistent with the public interest and should be granted.⁴⁶

V. CONCLUSION

MobileMedia and the Bureau agree that the proposed transaction raises no competitive concerns. Moreover, all party commenters agree that the merger is entirely consistent with the Commission's *Second Thursday* doctrine. Indeed, the transaction will produce enormous public interest benefits. However, some of these benefits may be lost to delay if approval of the Second Thursday Petition is linked to completion of MobileMedia's compliance efforts. In the interests of preserving the full benefits of the transaction, MobileMedia respectfully requests that the Commission grant the Applications expeditiously. As MobileMedia has shown, the compliance efforts are unrelated to the *Second Thursday* proceeding. Hopefully, the Commission will be able to act upon any possible enforcement actions simultaneously with the Applications. MobileMedia will make every effort to provide the Commission with the information it needs to act on the compliance issues simultaneously with the Applications. However, grant of the Second Thursday Petition is without prejudice to any enforcement

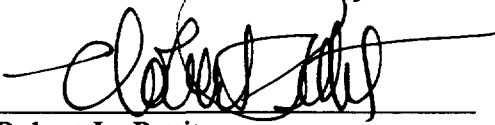
⁴⁶ In addition, ORBCOMM objects to MobileMedia's request for waiver of application fees with the bald, and unsupported, assertion that the Second Thursday Petition fails to justify the relief. ORBCOMM Comments at 2. As MobileMedia explained in the Second Thursday Petition, the Commission has routinely granted requests for fee waivers in the bankruptcy context where such fees may act as an impediment to transfer. Second Thursday Petition at 21-22. ORBCOMM does not challenge MobileMedia's characterization of the FCC's precedent.

action arising out of MobileMedia's discrepancy reports that the Commission or Bureau might initiate and, accordingly, the Petition should be granted without conditions.

Respectfully submitted,

**MOBILEMEDIA CORPORATION,
DEBTOR-IN-POSSESSION**

By:



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November 27, 1998

687420

CERTIFICATE OF SERVICE

I, Stephanie E. Williams, hereby certify that on this 27th day of November, 1998, I caused copies of the foregoing Reply Comments on Applications for Transfer of Control and Petition to Terminate and for Special Relief to be delivered via first-class mail to the following:

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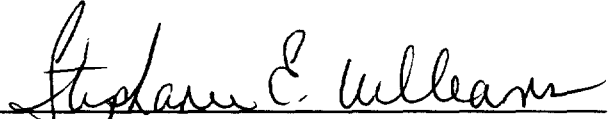
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EXHIBIT 1

DUPLICATE



MobileComm

November 12, 1998

Mr. Roger Noel
Wireless Telecommunications Bureau
Federal Communications Commission
2100 M Street, N.W.
Washington, D.C. 20554

RECEIVED

NOV 13 1998

FEDERAL COMMUNICATIONS COMMISSION
DEPT. OF THE INTERIOR

**RE: Report on License Reconciliation Project
and Request for Special Temporary Authority**

Dear Mr. Noel:

As discussed with Commission staff, this letter is an initial report on the effort of MobileMedia Corporation, Debtor-in-Possession, to reconcile the FCC's and the company's station and database files. This effort required MobileMedia to consolidate, restructure and supplement station files containing almost one million pages of documents and over 12,000 database records covering approximately 6,000 operating facilities and 2,000 licenses obtained through the acquisition of two major paging companies and numerous smaller companies. It also involved the physical inspection of each of MobileMedia's facilities at over 3,000 sites located throughout the United States.

MobileMedia has recently completed the first two steps of this extensive, two-year project and is now taking the next step to reconcile its licensing information with its site inspection data. It has uncovered a number of errors in the agency's records as well as errors or omissions in the filings submitted to the FCC.¹ In many cases, this report requests correction to the FCC's station files. In other cases, MobileMedia seeks special temporary authority to continue operations that support critical public safety and governmental activities.

I. LICENSE RECONCILIATION PROJECT

A. Background

While MobileMedia has briefed numerous Commission staff members regarding its compliance program, it may be useful to provide a brief description here. MobileMedia has implemented a comprehensive compliance plan as part of its

¹ Most of the errors reported in this letter relate to filings made by previous licensees acquired by MobileMedia or authorized by former employees of those previous licensees.

commitment to ensure operation in accordance with FCC rules and regulations.² This plan — which the company believes is unique to the industry and may serve as a model for other companies — was developed and is being monitored under the supervision of an independent consultant, Ralph Haller, former Chief of the FCC's Private Radio Bureau, with the assistance of John Theimer, a former Engineer-in-Charge at the Miami and Buffalo offices of the Field Operations Bureau.

One aspect of this plan involves the reconciliation of the FCC's and MobileMedia's station and database files.³ This report describes this reconciliation effort and discloses MobileMedia's initial findings. MobileMedia anticipates that it will file additional reports on a periodic basis as necessary or appropriate.

B. Step One: Information Gathering and File Preparation

The first step in MobileMedia's reconciliation process involved consolidating, restructuring and supplementing differently organized and often incomplete files inherited through two major acquisitions — Dial Page in 1995 and MobileComm in 1996 — and numerous associated acquisitions.

The files for these companies and MobileMedia cover approximately 6,000 operating facilities and comprise almost one million pages of documents, most of which were previously maintained at various company and counsel offices located throughout the country. MobileMedia shipped these documents to a central location and created station files that provided needed licensing information in a uniform and consistent format. In addition, MobileMedia obtained official copies of its most recent authorizations from the FCC to include in its files.

As part of this process, MobileMedia also restructured, merged, updated, and evaluated the separate computer databases of the companies it acquired. The resulting database contains over 12,000 records that include numerous fields that provide the legal and technical information MobileMedia requires to comply with all FCC and FAA rules and regulations. This database is accessible on-line from various MobileMedia offices so that key personnel can monitor the status of licenses and pending applications.

² A copy of the compliance plan was previously supplied to the Commission.

³ MobileMedia conducted this effort in addition to preparing and submitting numerous other extensive filings associated with its day-to-day operations, license renewals, tower registrations, bankruptcy proceedings (e.g., assignment applications), 929/931 MHz database clean up, and FCC investigative inquiries.

MobileMedia initiated this first step in 1996 and completed it in 1997. As a result, its extensive station files are now organized and readily accessible in a single location (in more than 95 cabinet drawers) at MobileMedia's regulatory offices in Arlington, Virginia. Relevant copies of these files are also available at other MobileMedia offices.

C. Step Two: Site Inspection

The second step in MobileMedia's reconciliation project involved physically inspecting each of its facilities at over 3,000 sites located throughout the United States. This effort required several MobileMedia managers and consultants to travel to various field offices located throughout the United States and to train technicians and other staff about the FCC's rules and regulations as well as how to conduct on-site inspections under the compliance plan. For this purpose, the company developed a five-page site inspection form (SIF) that requests extensive technical and operational details for each site so that MobileMedia may reconcile licensed and actual operations.

Once the site inspections were completed, MobileMedia engineering and regulatory personnel reviewed the SIFs and input appropriate data into MobileMedia's database. In many cases, MobileMedia personnel were required to seek additional information from the field before generating data to be included in the database or files. This effort was essentially concluded late this Fall.

D. Step Three: Reconciliation

MobileMedia is now taking the next step in its reconciliation effort. In essence, this involves comparing its station files with its site inspection data to determine whether the FCC's and the company's license information accurately reflects MobileMedia's actual operations.

As we have advised the staff on several occasions, MobileMedia anticipated finding discrepancies between its licensing database and its site inspection data. These discrepancies were expected to involve: (1) authorizations that appear in the FCC's database that are no longer in operation and that have been or will be canceled;⁴ (2) errors or missing information in the FCC's database; (3) errors in license coordinates discovered due to more accurate mapping and positioning equipment now available; (4) facilities that do not appear on a license because they have been relocated or installed

⁴ This letter does not describe sites in this category. MobileMedia has and will continue on an ongoing basis to return to the FCC the authorizations for discontinued facilities. To date, it has returned for cancellation authorizations for approximately 1,000 such facilities.

on a permissive basis, as permitted under FCC rules, and do not require a license; (5) facilities that may have been installed properly in accordance with an FCC authorization, but for which no record of the authorization now appears in the Commission's data base; and (6) facilities that do not appear on a license that have been relocated or installed without research efforts being able to find documentation of appropriate authorization as required under the FCC's rules.

The remainder of this report describes MobileMedia's initial findings and requests special temporary authority for certain facilities.

II. FINDINGS

A. Errors or Missing Information in the FCC's Database

1. Orlando, Florida (KIY508)

MobileMedia is currently operating control facilities on 959.9625 MHz under call sign KIY508 at 250 North Orange Avenue, Orlando, Florida (N. Lat. 28-32-41; W. Long. 81-22-48). Nevertheless, the authorization for these facilities appears to have been inadvertently deleted from the current license for this call sign. Although the transmitter appears on an authorization for KIY508 issued on February 7, 1995 (See Tab A, Location No. 18), it does not appear on subsequently issued authorizations.

MobileMedia believes that the transmitter may have been deleted by the FCC in response to a "Request for Correction of Authorization" filed on August 31, 1995. A copy of that filing is attached at Tab A for the staff's convenience. That request sought, *inter alia*, to have other, *repetitive* listings for frequency 959.9625 removed from the authorization for KIY508 (See ¶ 8). Instead, it appears that the frequency was deleted from the authorization entirely.

MobileMedia also notes that the authorization incorrectly indicates that the licensee is "Dial Page, Inc." However, this call sign was transferred to MobileMedia DP Properties, Inc., in 1995, as authorized by the Commission, and to MobileMedia DP Properties, Inc., Debtor-in-Possession, in 1997.

Accordingly, MobileMedia respectfully requests that the Commission correct the authorization for these facilities as described above.

2. Chicago, Illinois (KDS316)

The company is currently operating control facilities on 959.8875 MHz under call sign KDS316 at One 1st Plaza, Madison & Dearborn, Chicago, Illinois (N. Lat. 41-52-53; W. Long. 87-37-48). It appears that this site may have been inadvertently deleted from the authorization for Station KDS316 when the FCC processed a request for special temporary authority filed by the previous licensee to operate at an alternate location.

On June 20, 1994, the predecessor licensee of these facilities filed a request for special temporary authority to operate from an alternate site when a heat wave caused a failure of the transmitter. The request was granted on June 22, 1994. On that same day, however, the company mailed a notice to the Commission indicating that it had restored the facilities at the licensed location. Subsequent to this notice of the restoration of normal service on this station — and in all likelihood as a result of the confusion caused by the cancellation of the special temporary authority almost immediately upon its grant — the authorization for this site was apparently deleted from the license for KDS316. Copies of relevant filings regarding this site are attached at Tab B.

MobileMedia respectfully requests that the Commission correct the error.

3. Exeter, Rhode Island (KCA725)

MobileMedia is currently operating a transmitter on 454.175 MHz under call sign KCA725 at West Route 165, 6.3 miles west of Exeter, Rhode Island (N. Lat. 41-34-58; W. Long. 71-39-25). The license for these facilities incorrectly indicates that MobileMedia operates on 454.225, 454.100, 75.70, 75.92 and 75.74 MHz under this call sign and that the coordinates are N. Lat. 41-49-02; W. Long. 71-25-31. See Tab C.

These errors appear to have been made by the FCC in the course of processing a renewal application and a subsequent correction. On February 3, 1989, MobileMedia filed a renewal application deleting frequencies 454.225, 454.100, 75.70, 75.92 and 75.74 MHz from the authorization for KCA725. On November 20, 1991, MobileMedia filed a "Request for Correction to License Renewal Authorization" seeking, *inter alia*, to add frequency 454.175 (which had been inadvertently deleted along with the other frequencies) for this location. See Tab C. The license was not altered correctly in response to MobileMedia's request, however; *all* of the frequencies previously used under call sign KCA725 *including* 454.175 were added back onto the license and the coordinates were listed incorrectly. MobileMedia respectfully requests that the Commission correct the authorization as specified in MobileMedia's letter of November 20, 1991.

4. Oxford, North Carolina (WPFF987)

MobileMedia is currently operating a transmitter on 462.825 MHz under call sign WPFF987 at the WQOK FM Tower, 1.7 miles north of Route 158, Oxford, North Carolina (N. Lat. 36-20-52; W. Long. 078-40-00). MobileMedia obtained these facilities from Dial Page, Inc., in a transaction that closed in 1995. PCIA's records show that it coordinated these facilities on November 30, 1994. The facilities were authorized under call sign WPFF987 for a 5-year term with an expiration date of July 12, 1999. A copy of the license is attached at Tab D.

The FCC's database indicates that this station was canceled on July 20, 1995, and specifies the informational code "405A DAO." MobileMedia has not been able to locate any paperwork in its own or the FCC's files to explain why or how this call sign was canceled. It knows of no reason why a deletion would have been requested or why the FCC would have deleted the license. Moreover, the company has no record of any FCC notification of the deletion. MobileMedia has requested the files for this station from the FCC to research this matter further. It understands that these files must be requested from the FCC's archives in Philadelphia, and the company will apprise the agency of its findings once it has better information.

In the meantime, MobileMedia respectfully requests that this license be reinstated in the FCC's database or be reauthorized. To the extent necessary, it also requests the grant of special temporary authority to continue operations.⁵

MobileMedia submits that such action is in the public interest, convenience and necessity. This transmitter is part of MobileMedia's shared, wide-area 462.825 MHz system in Georgia, North Carolina and South Carolina licensed under Part 90 of the FCC's rules. It holds authorizations for over 80 operational stations in these three states and provides service to over 75,000 subscribers, including subscribers involved in public safety and governmental activities.

⁵ MobileMedia will also request that this call sign or any newly issued call sign be incorporated into the applications now pending at the FCC seeking the transfer of control of MobileMedia to Arch Communications Group, Inc. See Public Notice, Report No. LB-99-05, "MobileMedia Corporation, Debtor-In-Possession, and Arch Communications Group, Inc., Seek FCC Consent to Transfer Control of Licenses," DA 98-2080, released Oct. 15, 1998. To that end, MobileMedia intends to file an amendment to those applications.

5. Lancaster, South Carolina (WNXK242)

MobileMedia currently operates a transmitter on 462.825 MHz under call sign WNXK242 at 0.5 miles east of the Intersection at US 521 & SR 903, Lancaster, South Carolina. The lease for these facilities was originally signed in November of 1990, and operation began in 1991. According to MobileMedia's Technical Manager for this site, the facilities have been operating under call sign WNXK242 since the station was constructed. MobileMedia obtained these facilities from Dial Page, Inc., in a transaction that closed in 1995. Attached at Tab E is a copy of the license.

The FCC's records show that station WNXK242 was canceled on July 20, 1995, and specifies the informational code "405A DAO." MobileMedia has not been able to find any paperwork in its or the FCC's files as to why or how this call sign was canceled. Again, it knows of no reason why a deletion would have been requested or why the FCC would have deleted the license. Likewise, MobileMedia has no record of FCC notification of the deletion. It has requested the files for this station from the FCC's archives to research this matter further and will apprise the agency of its findings once it has better information.

MobileMedia also notes that the address on the license is incorrect. The authorization identifies the address as "0.5 mi E of Int. US 501 & SR 903." There is no US 501 in Lancaster. The correct address is "0.5 mi E of Int. US 521 & SR 903." In addition, MobileMedia has determined through the use of more accurate mapping equipment now available that the correct coordinates are N. Lat. 34-42-45; W. Long. 80-44-27 (NAD 83). Last, MobileMedia notes that because this call sign was deleted — and it therefore was not aware of this call sign until it conducted its reconciliation effort — it did not apply for renewal or the transfer of the license. The license expired on January 27, 1997.

Accordingly, MobileMedia respectfully requests that this license be reinstated in the FCC's database or reissued as corrected above. To the extent necessary, it also requests the grant of special temporary authority to continue operations.⁶

MobileMedia submits that such action is in the public interest, convenience and necessity. This station is providing service to over 2400 subscribers, including several public health and safety organizations. For example, the facilities support the

⁶ MobileMedia will also request that this call sign or any newly issued call sign be incorporated into the applications now pending at the FCC seeking the transfer of control of MobileMedia to Arch Communications Group, Inc. To that end, MobileMedia intends to file an amendment to those applications.

operations of the Piedmont Medical Center; Phillip Medical Center; South Carolina Law Enforcement Department; the City of Rock Hill; York County government and the Bureau of Alcohol, Tobacco and Firearms.

6. Greenville, South Carolina (WNSI547)

MobileMedia currently operates facilities under call sign WNSI547 in Greenville, South Carolina. The Commission's records indicate, however, that this station is licensed to "Dial Page, Inc." See Tab F. As the Commission is aware, MobileMedia acquired Dial Page, Inc., in 1995. It appears, though, that the license for WNSI547 was not properly transferred at the time of that transaction. Moreover, because it had not been properly transferred the call sign was not included in subsequent assignment or transfer applications, including the current application to transfer MobileMedia Corporation to Arch Communications Group, Inc.⁷

Accordingly, MobileMedia respectfully requests that the license for WNSI547 be corrected to reflect that the licensee of this station is "MobileMedia DP Properties, Inc., Debtor-in-Possession."

B. Coordinate Errors

1. Woodruff, South Carolina (WPAH861)

MobileMedia is currently operating a transmitter on 462.825 MHz under call sign WPAH861 at the Roebuck Water District Tank, Woodruff, South Carolina. However, the license for these facilities contains incorrect coordinates (*i.e.*, N. Lat. 34-47-56; W. Long. 82-00-58). See Tab G.

These facilities were obtained from Dial Page, Inc., in a transaction that closed in 1995. MobileMedia's technicians have confirmed that the transmitter was indeed constructed at The Roebuck Water District Tank, but that the correct coordinates for this tank are N. Lat. 34-48-09; W. Long. 82-00-30 (NAD 83). This determination was possible due to more accurate mapping and positioning equipment now available.

MobileMedia believes that the coordinates for the location may have been inaccurately described in the initial license application. It is in the process of obtaining

⁷ MobileMedia will also request that this call sign be incorporated into the applications now pending at the FCC seeking the transfer of control of MobileMedia to Arch Communications Group, Inc. To that end, MobileMedia intends to file an amendment to those applications.

copies of the station files from the FCC's archives to confirm the cause of this error and will apprise the FCC of its findings as soon as possible. In the meantime, MobileMedia respectfully requests correction of the FCC's database.

2. Reidsville, North Carolina (WPFS500)

MobileMedia is currently operating a transmitter on 462.825 MHz under call sign WPFS500 at Annie Penn Hospital, 618 South Main Street, Reidsville, North Carolina. The license for these facilities contains incorrect coordinates (*i.e.*, N. Lat. 36-21-13; W. Long. 79-39-50). See Tab H.

These facilities were obtained from Dial Page, Inc., in a transaction that closed in 1995. MobileMedia's technicians have confirmed that the transmitter is indeed located on the roof of the Annie Penn Hospital, but that the correct coordinates for the hospital are N. Lat. 36-21-15; W. Long. 79-40-05 (NAD 83). This determination was possible due to more accurate mapping and positioning equipment now available.

MobileMedia believes that the location of the transmitter may have been inaccurately described in the initial license application. It is in the process of obtaining copies of the station files from the FCC's archives to confirm the cause of this error and will apprise the FCC of its findings as soon as possible. In the meantime, MobileMedia respectfully requests correction of the FCC's database.

3. Myrtle Beach, South Carolina (WNMC905)

MobileMedia is currently operating a transmitter on 462.825 MHz under call sign WNMC905 at the Renaissance Tower, Myrtle Beach, South Carolina. However, the license for these facilities contains incorrect coordinates (*i.e.*, N. Lat. 33-38-03; W. Long. 78-56-55). See Tab I.

These facilities were obtained from Dial Page, Inc., in a transaction that closed in 1995. MobileMedia's technicians have confirmed that the transmitter is indeed located atop the Renaissance Tower, but that the correct coordinates for the tower are N. Lat. 33-37-40; W. Long. 78-57-12 (NAD 83). This determination was possible due to more accurate mapping and positioning equipment now available.

MobileMedia has determined that the coordinates of the transmitter were inaccurately described in the initial license application. See Tab I. Accordingly, it respectfully requests correction of the FCC's database.

4. Simpsonville, South Carolina (WNKN728)

MobileMedia is currently operating a transmitter on 462.825 MHz under call sign WNKN728 at the Cryovac Plant, North Maple Street, Simpsonville, South Carolina. The license for these facilities contains incorrect coordinates (*i.e.*, N. Lat. 34-44-24; W. Long. 82-16-04). See Tab J.

These facilities were obtained from Dial Page, Inc., in a transaction that closed in 1995. MobileMedia's technicians have confirmed that the transmitter is indeed located on the roof of the Cryovac Plant, but that the plant is located at N. Lat. 34-44-55; W. Long. 82-16-04 (NAD 83). This determination was possible due to better mapping and positioning equipment now available.

MobileMedia has determined that the location of the transmitter was inaccurately described in the initial license application. See Tab J. Accordingly, it respectfully requests correction of the FCC's database.

5. Greenville, South Carolina (WNAX283)

MobileMedia currently operates a transmitter on 462.825 MHz under call sign WNAX283 at the Greenville Memorial Hospital, 701 Grove Road, Greenville, South Carolina. The license for these facilities contains incorrect coordinates (*i.e.*, N. Lat. 34-49-22, W. Long. 82-25-52). See Tab K.

These facilities were obtained from Dial Page, Inc., in a transaction that closed in 1995. MobileMedia's technicians have confirmed that the transmitter is indeed located on the roof of the Greenville Memorial Hospital, but that the correct coordinates for the hospital are N. Lat. 34-49-04; W. Long. 82-24-50 (NAD 83). This determination was possible due to more accurate mapping and positioning equipment now available.

MobileMedia has determined that the coordinates for these facilities were inaccurately described in the initial license application (See Tab K), and it respectfully requests correction of the FCC database.

6. Camden, South Carolina (WNLL872)

MobileMedia is currently operating a transmitter on 462.825 MHz under call sign WNLL872 at Sandy Springs Road, Camden, South Carolina. The license for these facilities contains incorrect coordinates (*i.e.*, N. Lat. 34-15-29; W. Long. 80-33-42). See Tab L.

These facilities were obtained from Dial Page, Inc., in a transaction that closed in 1995. MobileMedia has determined that the coordinates appearing on the license do not accurately reflect the location of the Sandy Springs Road. MobileMedia's technicians have determined through the use of more accurate mapping and positioning equipment now available, and have confirmed with the tower owner, that the coordinates for these facilities are N. Lat. 34-17-41; W. Long. 80-37-08 (NAD 83), a location 3.4 miles north of Camden.

MobileMedia has determined that the coordinates and address for the location were inaccurately described in the initial license application (See Tab L) and respectfully requests that the license for WNLL872 be corrected to reflect the actual coordinates and address.

C. Missing Licensee Filings

1. Texarkana, Texas (KNKO386)

The company is currently operating a transmitter on 931.8625 MHz under call sign KNKO386 off T. P. Lake Road, Texarkana, Texas (N. Lat. 33-25-48; W. Long. 94-05-08).

Subsequent to completion of construction of these facilities in December 1996, MobileMedia field staff prepared an "Affidavit of Construction" as required under its compliance plan and submitted it to MobileMedia's engineering office for processing. See Tab M. The affidavit was processed as though the facilities qualified as a "permissive" 100% fill-in and, therefore, were considered not to require FCC approval or notification. See *generally*, 47 C.F.R. §§ 22.142(a)(3), 22.163, 22.165 (1997).

MobileMedia has now determined that these facilities do *not* constitute a permissive fill-in, but instead were the subject of a construction permit (File No. 31540-CD-P/ML-95) that expired May 9, 1997. Because the affidavit incorrectly indicated that these facilities were processed as permissive, however, MobileMedia did not complete and file a Form 489 notification of construction as required by the FCC's rules. *Id.* at § 22.142. Nevertheless, the facilities were timely constructed and service to subscribers commenced in accordance with the construction permit.

By this letter, MobileMedia notifies the Commission of the construction of and the commencement of service over these facilities in accordance with the construction permit. A Form 489 will be submitted shortly for these facilities.

2. Charleston, South Carolina - Roper Hospital (WNMY497)

MobileMedia operates 462.825 MHz facilities under call sign WNMY497 at 316 Calhoun Street, Charleston, South Carolina (N. Lat. 32-46-58; W. Long. 079-56-52 (NAD 83)). These facilities were obtained from Dial Page, Inc., in a transaction that closed in 1995.

The original license for this transmitter was issued on May 10, 1989, and authorized operations on this channel at Joseph Floyd Manor, 2106 Mount Pleasant, Charleston, South Carolina (N. Lat. 32-46-53; W. Long. 079-55-53). MobileMedia has determined through discussions with local technical staff, however, that these facilities were relocated and have been operating at Roper Hospital since the middle of 1993. The technical staff indicated that it relocated the site under the impression that the appropriate paperwork had been prepared and filed with the FCC. The Hospital is approximately 1.04 miles from the original site.

MobileMedia respectfully requests special temporary authority to continue to operate this site pending action on an application it intends to file shortly for these facilities.⁸ It submits that grant of an STA and the underlying application would be in the public interest, convenience and necessity. This transmitter is part of MobileMedia's shared 462.825 MHz "Mountain to the Sea" system in Georgia, North Carolina and South Carolina licensed under Part 90 of the FCC's rules. It holds authorizations for over 80 operational stations in these three states and provides service to over 75,000 subscribers, including subscribers involved in public safety and governmental activities. This site in particular supports the Roper Hospital, the Charleston County Sheriff's Department, and the U.S. Coast Guard. It also serves the College of Charleston, the South Carolina Port Authority, and the Commission of Public Works.

3. Johnsonville, South Carolina (WPEG905)

MobileMedia is currently operating a transmitter on shared channel 462.825 MHz at Hwy 41, Wellman Manufacturing Water Tower, Johnsonville, South Carolina (N. Lat. 33-49-59; W. Long. 079-26-44 (NAD 83)). These facilities were obtained from Dial Page, Inc., in a transaction that closed in 1995.

According to MobileMedia's local technician, these facilities were originally authorized under call sign WPEG905 at another site but were relocated to the current

⁸ As MobileMedia is an incumbent licensee on this channel, it should not be subject to the FCC's freeze on commercial applications. A copy of a Table A providing the technical details of this site is attached at Tab N or the staff's convenience.

site, approximately 7.27 miles away. However, MobileMedia has been unable to find any paperwork indicating that the relocation was authorized by the FCC. The relocation occurred in 1995, prior to the transfer of control of these facilities to MobileMedia.

MobileMedia respectfully requests special temporary authority to continue to operate this site pending action on an application it intends to file shortly for these facilities. A copy of a Table A providing the technical details of this site is attached at Tab O. These facilities are part of MobileMedia's 462.825 MHz "Mountain to the Sea" system described above supporting over 75,000 subscribers, including subscribers involved in public safety and governmental activities. In particular, these facilities provide the only paging service in the area, including service to the Johnsonville and Hemingway police departments. Accordingly, it submits that grant of an STA and the underlying application would be in the public interest, convenience and necessity.

4. Abbeville, South Carolina

The company operates a transmitter on shared channel 462.825 MHz at the Intersection of Highways 72 & 28, Abbeville, South Carolina (N. Lat. 34-08-38; W. Long. 82-23-56 (NAD 83)). According to MobileMedia's technical manager for South Carolina, verbal notice was given by a former employee of MobileComm that the site was licensed and that construction could commence. The facilities were constructed and began operation in the Fall of 1996, prior to the implementation of MobileMedia's compliance plan.

MobileMedia has not been able to find an authorization for these facilities in its own files or at the FCC.⁹ Nor does PCIA have any record of processing an application on this frequency at these coordinates. Accordingly, MobileMedia respectfully requests special temporary authority to continue to operate this site pending action on an application it intends to file shortly for these facilities. Attached at Tab P is a Table A providing the technical details of the site.¹⁰

⁹ MobileMedia has also recently learned of another transmitter that was not properly authorized. Field technicians installed a transmitter in early 1996 to operate on 462.825 MHz at Duke University at Durham, North Carolina. This transmitter was operating until recently when it malfunctioned. MobileMedia technicians visiting the site discovered after discussions with the company's compliance personnel that the facilities were not properly authorized, and the facilities were not placed back into operation. MobileMedia does not seek temporary authority for these facilities.

¹⁰ The technical details provided in the Table A are based upon information obtained from the site inspection performed by MobileMedia. The tower at the site is owned and operated by a third party, however, and MobileMedia understands that

MobileMedia submits that grant of an STA and the underlying application would be in the public interest, convenience and necessity. This transmitter also is part of MobileMedia's 462.825 MHz "Mountain to the Sea" system described above supporting over 75,000 subscribers. The system serves over 600 units in the Abbeville area in particular, including those that support Abbeville Memorial Hospital and the Abbeville 911 service.

5. Jacksonville, Florida

MobileMedia is currently operating a control transmitter on 72.32 MHz at 8675-1 Hogan Road (N. Lat. 30-16-52, W. Long. 81-34-11 (NAD 83)). MobileMedia obtained these facilities from Dial Page, Inc., in a transaction that closed in 1995.

There is no record of these facilities in the FCC's database. MobileMedia's files indicate that an application was filed by a predecessor licensee on March 23, 1989, for a permit to construct these facilities. That application was accepted for filing and listed on a Public Notice dated May 3, 1989 (Report No. PMS-89-31, See Tab Q). MobileMedia has been unable to determine, however, whether a construction permit was granted or whether the construction of these facilities was covered by an FCC Form 489 notification.

Accordingly, MobileMedia respectfully requests special temporary authority to continue to operate this control pending action on an application shortly for these facilities. Attached at Tab Q is a Table A providing the technical details of the site.

MobileMedia submits that grant of an STA will serve the public interest, convenience and necessity. These facilities control part of a wide area system of transmitters operating in the Florida area. This system provides service to over 19,000 subscribers including those engaged in public safety and governmental activities. In particular, the system serves the Florida Department of Health.

owner has not registered the site with the FCC. MobileMedia also understands that the FAA approval for the site contains incorrect coordinates (*i.e.*, N. Lat. 34-08-27; W. Long. 82-24-16). MobileMedia intends to assist the owner with submitting the appropriate filings to the FAA and FCC for its tower.

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III. **CONCLUSION**

This letter is intended to advise the Commission regarding MobileMedia's initial findings now that it has begun the third step in its reconciliation effort. MobileMedia expects that it will make other, similar findings in this ongoing process and will file additional reports on a periodic basis. In the meantime, please call our FCC counsel Robert L. Pettit of Wiley, Rein & Fielding at (202) 429-7019 should you have any questions or need further information regarding this matter.

We look forward to working with the Commission to achieve MobileMedia's goal of full and complete compliance with FCC rules and regulations.

Respectfully submitted,



Ron Grawert
President and CEO

cc: Rosalind Allen, Esq.
Kathleen Ham, Esq.
John Schauble, Esq.



MobileComm

November 24, 1998

Mr. Roger Noel
Wireless Telecommunications Bureau
Federal Communications Commission
2100 M Street, N.W., Suite 8643-A
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**RE: Second Report on License Reconciliation Project
and Request for Special Temporary Authority**

Dear Mr. Noel:

This letter is the second report regarding the ongoing efforts of MobileMedia Corporation, Debtor-in-Possession, to reconcile the FCC's and the company's station and database files. The first report was filed November 13, 1998.

As mentioned in the first report, MobileMedia anticipated finding discrepancies between its licensing database and the site inspection data collected by its technicians. These discrepancies were expected to involve, among other things: errors or missing information in the FCC's database; errors in license coordinates discovered due to more accurate mapping and positioning equipment now available; facilities that may have been installed properly in accordance with an FCC authorization, but for which no record of the authorization now appears in the Commission's data base; and facilities that do not appear on a license that have been relocated or installed without research efforts being able to find documentation of appropriate authorization as required under the FCC's rules.¹

This report describes MobileMedia's most current findings.

A. Errors or Missing Information in the FCC's Database

1. Asheville, North Carolina (KIY779)

MobileMedia is currently operating control facilities on 75.94 MHz under call sign KIY779 at 243 Haywood Street, Asheville, North Carolina (N. Lat. 35-35-39; W. Long. 82-33-44) although the facilities do not appear on the current station license. See Tab A. It appears the authorization for this control link may have been inadvertently changed on the FCC's database when the FCC processed a request for correction filed in 1995 by the previous licensee.

¹ For a full description of MobileMedia's compliance effort, please see MobileMedia's first report dated November 12, 1998, at 1-4.

On May 20, 1995, the previous licensee filed a request for partial cancellation of its radio station authorization seeking, *inter alia*, to delete the 75.94 MHz frequency for a different site, at Chambers Mountain, Haywood, North Carolina. See Tab A. It appears that the FCC may have also inadvertently deleted the current site as well, however.

MobileMedia respectfully requests that the license for this control link be reinstated in the FCC's database or be reauthorized. To the extent necessary, it also requests the grant of special temporary authority to continue operations.

2. Houston, Texas (KWU485)

MobileMedia is currently operating control facilities on 72.42 MHz under call sign KWU485 at 600 Travis Street, Texas Commerce Building, Houston, Texas (N. Lat. 29-45-36; W. Long. 95-21-50). It appears that this site may have been inadvertently deleted from the authorization for Station KWU485 in the FCC's files when the FCC processed a request for correction.

A copy of the license for KWU485, dated July 18, 1990, reflects facilities operating on 72.42 MHz at the coordinates listed above. See Tab B. On January 3, 1996, MobileComm of the Southwest, Inc. filed with the FCC a request for correction, asking that the Commission's records be corrected to add the control and standby frequency 72.58 MHz to the station license. A copy of the license dated July 30, 1997 reflects only the 72.58 MHz frequency, however. See Tab B. It appears that when the request to add frequency 72.58 MHz was processed, the FCC staff changed the frequency of the 72.42 MHz facilities to 72.58 MHz instead of simply *adding* the 72.58 MHz facilities to reflect the fact that the company was operating on *both* 72.58 MHz and 72.42 MHz.

Additionally, the licensee is incorrectly shown as "MobileMedia Communications, Inc." The correct licensee is "MobileComm of the Southwest, Inc." MobileMedia respectfully requests that the 72.42 MHz frequency be reinstated and corrected as described above. To the extent necessary, it also requests the grant of special temporary authority to continue operations.

B. Coordinate Errors

1. Crofton, MD (KNKL858, KNKM880)

MobileMedia is currently operating control and standby link facilities on 72.38 MHz under call sign KNKL858 and on 75.78 MHz under call sign KNKM880. The facilities are located on Conway Road, Crofton, Maryland. However, the licenses for these facilities contain incorrect coordinates. The correct coordinates are N. Lat. 39-01-48; W. Long. 76-44-22 (NAD 83). See Tab C. The distance between the coordinates

as stated on the licenses and the correct coordinates is .24 miles. The links have always been on the same tower (Tower Registration #1035814), which is the only tower on Crofton Road.

MobileMedia believes that these facilities may have been inaccurately described in applications filed by the previous licensee. The information shown on those applications reflect coordinates previously registered for the tower. The tower owner re-registered the tower several years ago, however, in order to correct the coordinates (see Tab C), but the prior licensee did not update its authorization to reflect that change.

MobileMedia also has discovered additional errors to the authorization for station KNKL858. KNKL858 contains an incorrect licensee name and address. The correct name and address is: MobileMedia Paging, Inc., 2101 Wilson Blvd., Suite 935, Arlington, VA, 22201. MobileMedia has also confirmed that it is no longer using the 72.42 MHz link licensed at this site. Accordingly, this frequency should be deleted from the license. MobileMedia respectfully requests that the Commission correct the license as requested above.

2. Birmingham, Alabama (WNJX917)

MobileMedia is currently operating a control facility on 72.50 MHz under call sign WNJX917 at 100 Oxmoor Blvd., Birmingham, Alabama. The license for these facilities contains incorrect coordinates, although the address information is correct. See Tab D. The correct coordinates for this frequency are N. Lat. 33-27-40; W. Long. 86-50-06 (NAD 83).

It appears that the prior licensee inaccurately described the location of WNJX917 in its initial license application. See Tab D. MobileMedia operates several other facilities at this location and the licenses for those facilities reflect the correct coordinates.

The license also contains an incorrect address for the control point. The correct control point address is 100 Oxmoor Blvd., Birmingham, Alabama. MobileMedia respectfully requests that the Commission correct this address on the license.

3. Nashville, Tennessee (KIY750, KLF651)

MobileMedia is currently operating control facilities on 75.66 MHz under call sign KIY750 and on 75.42 MHz under call sign KLF651 at 545 Mainstream Drive, Nashville, Tennessee. However, the licenses for these facilities contain incorrect coordinates. See Tab E. The correct coordinates for both call signs are: N. Lat. 36-12-03; W. Long. 86-48-40 (NAD 83). The distance between the coordinates as stated on the license and the correct coordinates is .27 miles. The links always have been at the same

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November 24, 1998
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location on the rooftop of the building at 545 Mainstream Drive, which is MobileMedia's main Nashville office. Accordingly, MobileMedia respectfully requests correction of the FCC's database.

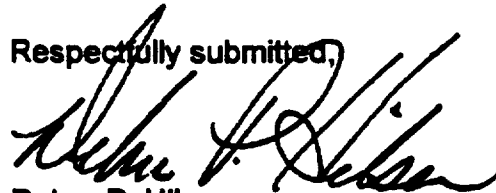
Moreover, the license for Station KIY750 contains three additional errors. First, the license incorrectly states the address as 545 "Nain Stream" Drive. The correct address is "545 Mainstream Drive." Second, the license incorrectly indicates that MobileMedia Communications, Inc. is the licensee. The correct licensee is "MobileComm of Tennessee, Inc." Finally, the license lists a 72.50 MHz control link at this location that is no longer in service and should be removed from the license. MobileMedia respectfully requests that the FCC make these corrections to the license for Station KIY750.

C. Missing Licensee Filings

MobileMedia has recently learned that field technicians installed facilities to operate on 931.8625 MHz at Ann Arbor, Michigan, in February of 1996, prior to the implementation of the compliance plan. It has not been able to locate any documentation that these facilities were authorized by the FCC. Operation of these facilities has been discontinued.

Should have any questions or need further information regarding this matter, please call our FCC counsel Robert L. Pettit of Wiley, Rein & Fielding at (202) 429-7019.

Respectfully submitted,



Debra P. Hilson
Manager - Regulatory Administration

cc: Rosalind Allen, Esq.
Kathleen O'Brien Ham, Esq.
John Schauble, Esq.

